WEARNE BROTHERS (M) SDN. BHD.

v.

CHIN HON BOON

HIGH COURT BORNEO, KUCHING
GEORGE SEAH J
[CIVIL SUIT NO. K 437 OF 1979]
6 APRIL 1982

HIRE PURCHASE: *Repossession of motor car - Statutory notice, not sent by the owner - Car taken from workshop - Acknowledging receipt sent 5 months later - Valuation of - Sold after repairs - Charges - Whether hirer entitled for whole of selling price - Sections 16(i), 17, 18(i) (a) (i) (ii), 19, Hire Purchase Act 1967.*

The defendant entered into a hire purchase agreement with the plaintiffs on 30 August 1977, for the purchase of a Ford Cortina motor car at the price of RM10,461 payable by 30 regular monthly instalments of RM258.32 each. An initial deposit of RM2,711 had been paid and the first payment to be made on 30 September 1977 and thereafter on the 30th working day of every successive month. The agreement was duly registered at the Hire Purchase No. 529/78 Registry, Kuching as Instrument.

The said motor car was involved in an accident with a lorry on 3 February 1978 after which the car was sent to one Lau Yung Huat Workshop for repairs to the damaged body. As there was some delay at the workshop, the defendant took the car to another workshop, Yung Seng Hin Autoworks. While the car was at the latter, it was towed to the plaintiffs' workshop sometime in February but the acknowledgment receipt of the said car was sent to the defendant only on 13 July 1978.

The plaintiffs spent a sum of RM3,064.92 to carry out the repairs to the said car and sold it for RM4,314 on 9 March 1979. The cash price of the car when purchased was stated to be RM8,900. The plaintiffs valued the car at RM1,500 in July 1978 after taking into account the estimated costs of repairs and replacements and agreed that the car was repossessed only on 4 July 1978. But the defendant was of the view that the car should be valued in the region of RM8,000 in February 1978 and the repair charges would be RM750. The defendant further submitted that the car was taken into custody by the plaintiffs in February 1978 but was attended to only on 4 July 1978 and that the whole of the selling price of RM4,314 should be credited to the hirer without deduction.

Held:

[1] The plaintiff did not send any statutory notice in the form set out in the Fourth Schedule to the Hire Purchase Act 1967 to the defendant. Pursuant to s. 16 (ii) thereof. However the plaintiff did on 13 July 1978 send to defendant acknowledging receipt of the motor car.

[2] The plaintiffs took the car into their custody on 18 February 1978 but did not officially repossess it until 4 July 1978. There was a delay of approximately 5 months when the said motor car was lying about in the plaintiffs' workshop. Both the plaintiffs and the defendant are equally to be blamed for this state of affairs.

[3] It would be a great injustice to the plaintiffs to accede to the submission of the defendant to credit the whole of the selling price of RM4,314 to the hirer.

[4] The valuation report of the car provided by both the plaintiffs and the defendant were not fair. A fair and reasonable valuation would be RM2,500.

[5] After deducting RM2,500 the outstanding amount is RM4,236.10 of which the defendant had admitted the sum of RM1,952.56 and judgment by consent was entered for that sum, the balance owing by the defendant to the plaintiffs is therefore RM2,283.54.

[Judgement in favour of the plaintiffs for the sum of RM2,283.54.]

For the plaintiffs - Anthony Liew
For the defendant - L. Tan

(Digest Form Only)

Also found at [1982] CLJ 264